

Advisory Opinion

IECDB AO 2008-02

February 11, 2008

Judy A. Jeffrey, Director
Department of Education
Grimes State Office Building
400 E. 14th St.
Des Moines, Iowa 50319-0146

Dear Director Jeffrey:

This opinion is in response to your letter of January 16, 2008, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us Dann Stevens, an employee of the Department of Education (DOE), is responsible for providing technical assistance to school districts and area education agencies regarding filing claims for federal Medicaid reimbursement. Mr. Stevens' adult, non-dependent son, is the owner of Timberline Billing Service (TBS) that offers Medicaid billing services to governmental entities. When TBS was being established Mr. Stevens provided the same factual information to his son that he provided anyone else who contacted him. There are times when a school district or area education agency contacts Mr. Stevens and requests the names of companies that engage in private Medicaid billing services. He has recommended his son's company, disclosing that his son owned the company. It is possible that he would join his son's business in the future.

QUESTION:

When making referrals concerning private sector companies, is disclosing the fact that one of the companies is owned by Mr. Stevens' son sufficient under the state code of ethics or should he refrain from making any recommendations concerning private Medicaid billing services?

OPINION:

We first note that this opinion applies only to conduct undertaken in the future, as the purpose of the Board's opinion process is to apply the laws and rules to a factual situation that may happen. If there are past acts that potentially violated the law or rules under the Board's jurisdiction, those matters would need to be resolved through the Board's compliance process.

Iowa Code section 68B.2A prohibits state officials and employees from engaging "in any outside employment or activity which is in conflict with the person's official duties and responsibilities." The statute then sets out specific situations of when a conflict is deemed to exist. The situation applicable to your question prohibits a state official or employee from using government resources "to give the person or member of the person's immediate family an advantage or pecuniary benefit...." Iowa Code section 68B.2(11) defines "immediate family members" as the "spouse and dependent children of a public official or public employee."

The Board has also adopted rule 351—6.8 prohibiting the misuse of public property. That rule prohibits, in pertinent part, state officials and employees from using "public property" to engage in a conflict of interest as prohibited in Iowa Code section 68B.2A, for "personal financial gain," for a "personal benefit to the detriment of the state."

As Mr. Stevens' son is not an "immediate family member" as defined in Iowa Code section 68B.2(11),¹ Mr. Stevens is not in an impermissible conflict of interest when using DOE resources to refer persons to his son's private business. It also does not appear that this conduct would violate the relevant provisions of Board rule 351—6.8. While disclosing that the company is owned by his son would not be mandated by the state code of ethics, it would be good public policy and is highly encouraged by the Board.

If, while still employed by DOE, Mr. Stevens were to accept employment with his son's business or would otherwise be receiving compensation or other personal financial gain from TBS, then he would be prohibited from making referrals to TBS using DOE resources under both Iowa Code section 68B.2A and Board rule 351—6.8. In addition, if Mr. Stevens were to sell or lease any goods or services to individuals, associations, or corporations that came under the regulatory authority of DOE, he would have to receive consent from DOE prior to making those sales or leases under the process set out in Iowa Code section 68B.4 and Board rule 351—6.11.²

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ His son is an adult and does not appear to be a “dependent” child as contemplated under the statutory definition.

² Iowa Code section 68B.4 and Board rule 351—6.11 apply to officials and employees of DOE as the Department of Education is a “regulatory agency” as defined in Iowa Code section 68B.2(23).